

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2077 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JAGDISHBHAI CHATURBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2077 of 1997
MR RR VAKIL for Petitioner No. 1
MS PUNANI, APP for Respondent No. 1
RULE SERVED for Respondent No. 2
NOTICE SERVED for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/09/2003

ORAL JUDGEMENT

#. Heard Mr.B.D.Jain, learned counsel for the petitioner
and Ms.Punani, learned APP for the respondent State.

#. Respondent No.2 - original complainant has been duly

served, but, he has chosen not to appear either personally or through his advocate, but, the record shows that he has sent one written reply in Gujarati vernacular in this court through the Registrar of this Court on 8.9.1997, which is a part of the record.

#. The present petitioner - original accused No.1 against whom the complaint has been filed by respondent No.2 - original complainant directly into the court of the Judicial Magistrate, First Class, Umreth, which has been numbered as M.Case No.52 of 1996, under Sections 420, 406, 504, 506(2) and 114 of IPC. On receiving the said complaint, learned J.M.F.C. issued the process under Section 156(3) of the Code of Criminal Procedure and directed the Police Officer to investigate into the matter and submit his report within a period of 30 days from the date of receipt of the order. The said order was passed on 16.8.1996. On receiving the said order, the Police has recorded the complaint and started investigation, which gave rise to file the present petition.

#. Mainly, it is argued by the learned counsel for the petitioner that, it is a civil dispute between the parties, secondly, it is barred by law of limitation and thirdly, the complaint is false and frivolous one, and, therefore, it is required to be quashed. He has also drawn my attention to the provisions of Article 136 of the Constitution of India along with Section 482 of the Code of Criminal Procedure.

#. I have gone through the written reply submitted by the original complainant wherein he has narrated all the facts along with his inability to remain personally present because of his old days and continuing illness. It is further stated that, because of poor economical condition, he is not in a position to engage the advocate. However, he tried to object the petition on various grounds and ultimately, it is requested that the notice of rule may be discharged and the Investigating Officer may be directed to investigate further in the matter.

#. Learned counsel for the petitioner took me to the complaint, which prima facie discloses the ingredients of the offence, and, therefore, the question of quashing the complaint at this juncture is out of question. Over and above, for the offence under Section 420 of the IPC, the question of limitation does not arise. Looking to the amount involved in the complaint in question, and since there is no dispute regarding applicability of the

provisions of Article 136 of the Constitution of India, the fact remains that the case is required to be made out by the petitioner for quashing of the complaint in question.

#. Looking to the facts and circumstances of the case and the facts narrated in the complaint itself, the same require thorough investigation, and, therefore, the complaint in question cannot be quashed. Hence, this petition is rejected. Rule is discharged. Interim relief granted earlier stands vacated forthwith.

(R.P.Dholakia, J)
(pathan)